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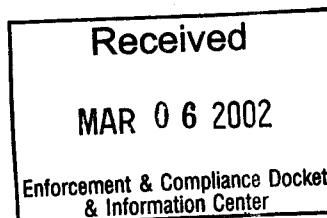
EC-2000-007
14-D-1105
RICHARD A. VARELA
DIRECTOR, OIL AND GAS DIVISION

RAILROAD COMMISSION OF TEXAS

OIL AND GAS DIVISION

February 8, 2002

Enforcement and Compliance Docket and Information Center (Mail Code 2201A)
Attn: Docket Number EC-2000-007
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460



Re: Comments on Establishment of Electronic Reporting; Electronic Records; Proposed Rule, August 31, 2001, 66 *Federal Register* 46162-01

Dear Sir or Madam:

Enclosed are the comments of the Railroad Commission of Texas on the Establishment of Electronic Reporting Electronic Records proposed rulemaking. While we applaud EPA's efforts with respect to electronic reporting and record keeping, we have several concerns with the proposed rulemaking. Our concerns are detailed in the attached comments.

We appreciate the opportunity to review and comment on the Proposal. If you have any questions, or need further information, please contact Ms. Hope Morgan, Director, Information Technology Services Division, Railroad Commission of Texas, at the address below, at (512) 463-7251, or at hope.morgan@rrc.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Richard A. Varela".

Richard A. Varela, Director
Oil and Gas Division

cc: Chairman Michael A. Williams
Commissioner Charles R. Matthews
Commissioner Tony Garza

Mr. Gregg A. Cooke, Regional Administrator
U.S. Environmental Protection Agency, Region 6

Mr. Jeffrey Saitas, Executive Director
Texas Natural Resource Conservation Commission

Mr. William Hochheiser, Manager, Oil & Gas Environmental Research
U.S. Department of Energy

Mr. Jerry Johnson, Department of Information Resources

**Comments of the
Railroad Commission of Texas
on the
EPA Proposal For Establishment Of Electronic Reporting And Electronic Records**

The U.S. Environmental Protection Agency (EPA) recently published in the Federal Register a proposal to allow electronic reporting to EPA and recordkeeping by allowing the use of electronic document receiving systems and recordkeeping methods that satisfy a set of proposed criteria. (66 FR 46161, August 31, 2001.) A state wishing to practice electronic reporting and recordkeeping in conjunction with a federally delegated EPA program would be required to submit to EPA for approval a revised program description that documents how the state will comply with these requirements.

While we applaud the EPA's efforts to identify issues and solutions relating to these issues, we are concerned with the proposal for several reasons.

First, the proposed requirements are too prescriptive. The proposed rules encompass electronic records filed with a State agency, records maintained by a state agency and electronic records submitted by a state to the EPA. The EPA recognizes that the majority of the various states and regulated industry have focused efforts and funding towards electronic reporting and recordkeeping. In addition, the standards and "best management practices" for electronic reporting and recordkeeping with respect to system security, data validity, electronic signatures and certification, transaction records, and system archives are evolving. In its proposal, the EPA states that the proposed criteria are not "technology specific" but allow flexibility to recognize current and past efforts in, and evolving technology for, electronic reporting and recordkeeping. However, the criteria are specific enough to imply particular types of technologies and are not sufficiently flexible to accommodate future advances in technology. Further, EPA's proposal sets up criteria for electronic reporting and recordkeeping of documents to ensure "enforceability" that are more stringent than that currently required for paper filing and recordkeeping.

Second, although EPA indicates that it coordinated with certain states and other entities with respect to the potential impact of the proposed rule, we are concerned that what they propose, and what we will be required to comply with, be consistent with what is required by other state and federal entities with respect to electronic reporting and recordkeeping. Because the issues associated with electronic reporting and recordkeeping are still evolving technically and legally, we suggest that EPA publish its preferred criteria as "guidelines" at this time and focus on coordinating with other federal and state efforts to ensure consistency and efficiency across governmental boundaries.

Third, the proposed requirements are expensive and would result in costs to state agencies and others for which EPA has not accounted. The EPA states that the proposed rules would be voluntary because paper filing and recordkeeping are still options and, therefore, would result in no substantial costs to states or regulated entities. However, the proposed rule would prohibit a state from receiving and maintaining electronic records until its systems and programs meet the proposed criteria and have been approved by EPA—basically a "trashing" of the existing electronic systems already developed by the state at great expense and a return to the inefficiencies and costs of paper. Further, the rule proposes to prohibit the conversion of archived paper documents to electronic form.

Fourth, the proposed regulations conflict with Texas state law, which mandates that electronic filing and reporting not add to the burden of private citizens and businesses that seek to take advantage of electronic reporting or electronic transactions.

Fifth, the proposed regulations may conflict with the federal and state rules of evidence regarding the admissibility of business or governmental records in court and administrative hearings. The

proposed rules add a layer of documentation to electronic records that do not exist for paper records and call for a technical standard of absolute reliability that does not exist. This may mandate the rejection of valid electronic records in cases where no paper records exist, resulting in serious miscarriages of justice in civil, criminal and administrative cases.

Sixth, portions of the criteria, particularly with respect to security and "precise routing," are not currently technically feasible.

We would request, at a minimum, the following:

- That existing electronic recordkeeping and reporting processes be grandfathered so that current electronic records filed and maintained by States, Tribes, and local environmental programs as well as by regulated industry not have to cease and be backward converted to paper until such time as the EPA first announces it is ready to receive electronic records and then approves each process.
- That, when implemented, the adopted standards are reasonable, cost effective and comply with the Paperwork Reduction Act, the Administrative Procedure Act, the Regulatory Flexibility Act, the Unfunded Mandates Act and other applicable laws.
- That the regulations not be heavily reliant on a single technology, such as electronic signatures. This field is in its infancy and may be replaced by biometrics or another technology.
- That the regulations do not call for impossible or non-existent technology such as "precise routing," or records that are absolutely tamper-proof.
- That the regulations do not conflict with the federal or state rules of evidence regarding the admissibility of business or governmental records in administrative hearings or civil and criminal trials, or add an extra layer of proof, documentation or metadata to electronic records that do not exist for paper records.
- That the EPA, prior to promulgating these regulations, coordinate with other federal agencies to avoid a plethora of conflicting regulatory schemes.
- That the EPA, prior to promulgating these regulations, submit them for review by records management professionals through the US Government Relations Committee at ARMA International (4200 Somerset Dr., #215, Prairie Village, KS 66208, 913-341-3808).